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10
11 Attorneys for Defendants
12 SEARS HOLDINGS CORPORATION and SEARS,
ROEBUCK AND CO.

13
14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16 RAMON PEREZ, as an individual and
17 on behalf of all others similarly situated,

18 Plaintiff,

19 v.

20 SEARS ROEBUCK AND CO., a New
York corporation, SEARS HOLDING
21 CORP., a Delaware corporation, and
DOES 1 through 100, inclusive,

22 Defendants.
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25
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27
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Case No. **CV 11-03527** DSF (PDW)
CLASS ACTION

**DEFENDANTS SEARS,
ROEBUCK AND CO. AND
SEARS HOLDINGS
CORPORATION'S NOTICE OF
REMOVAL**

DEFENDANTS SEARS, ROEBUCK AND CO.
AND SEARS HOLDINGS CORPORATION'S
NOTICE OF REMOVAL

1 TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL
2 DISTRICT OF CALIFORNIA AND TO PLAINTIFF AND HIS COUNSEL OF
3 RECORD:

4 PLEASE TAKE NOTICE that Defendants Sears Holdings Corporation and
5 Sears, Roebuck and Co. ("Defendants") file this Notice of Removal pursuant to 28
6 U.S.C. §§ 1332(d), 1441, 1446 and 1453 to effect the removal of the above-
7 captioned action, which was commenced in the Superior Court of the State of
8 California in and for the County of Santa Barbara, and states that the removal is
9 proper for the reasons stated below.

10 **BACKGROUND**

11 1. On March 14, 2011, Plaintiff Ramon Perez, individually and
12 purportedly on behalf of all others similarly situated, filed a Complaint in the
13 Superior Court of California for the County of Santa Barbara, entitled "Ramon
14 Perez, as an individual and on behalf of all other similarly situated, Plaintiff, v.
15 Sears Roebuck & Co., a New York corporation, Sears Holdings Corporation, a
16 Delaware corporation, and Does 1 through 100, inclusive, Defendants," No.
17 1379818 (the "Action"). The allegations of the Complaint in the Action are
18 incorporated by reference in this Notice of Removal without necessarily admitting
19 any of them.

20 2. The Complaint purports to assert five class-wide claims for
21 relief against all defendants in the case, alleging causes of action based upon the
22 plaintiff's employment relationship. The Complaint alleges class-wide causes of
23 action for violations of the California Labor Code and unfair business practices
24 statutes of California Business and Professions Code section 17200 *et seq.*, and
25 seeks relief in the form of allegedly unpaid overtime wages, meal and rest break
26 premium pay, penalties under the Labor Code, declaratory relief, and statutory
27 attorneys' fees and interest.

1 3. The Complaint names Defendant Sears Holdings Corporation, a
 2 non-California corporation with its principal place of business in Illinois, and
 3 Defendant Sears, Roebuck and Co., also a non-California corporation with its
 4 principal place of business in Illinois. Defendants are informed and believe there
 5 have been no other defendants named in this case.

6 4. Defendants' agent for service of process was served with the
 7 Summons and Complaint and other papers on March 24, 2011. The Summons and
 8 Complaint are attached hereto together with all other pleadings, process and orders
 9 served on Defendants as **Exhibit A**. This Notice of Removal is timely as it is filed
 10 within thirty days of the first receipt by a defendant of a copy of the Summons and
 11 Complaint in this matter. 28 U.S.C. § 1446(b).

12 **CLASS ACTION FAIRNESS ACT**

13 5. Defendants remove this action based upon the Class Action
 14 Fairness Act of 2005 ("CAFA"), codified in 28 U.S.C. § 1332(d). This Court has
 15 original jurisdiction of this action under § 1332(d)(2). As set forth below, this
 16 action is removable pursuant to 28 U.S.C. § 1441(a) as it is a class action in which
 17 at least one class member is a citizen of a state different from that of any one
 18 defendant, the proposed class exceeds 100 members, and the amount in controversy
 19 exceeds \$5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d)(2)(A).
 20 Further, no defendant identified in the Complaint is a state, officer of a state, or a
 21 governmental agency. 28 U.S.C. § 1332(d)(5).

22 **Diversity of Citizenship**

23 6. Plaintiff's Citizenship. Plaintiff alleges that he has resided
 24 within the state of California at all times relevant to the matters set forth in the
 25 Complaint. Complaint ¶ 5. For diversity purposes, a person is a "citizen" of the
 26 state in which he or she is domiciled. *See Kantor v. Wellesley Galleries, Ltd.*, 704
 27 F.2d 1088, 1090 (9th Cir. 1983). Residence is *prima facie* evidence of domicile.
 28

1 *See State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994).

2 Defendants therefore allege that Plaintiff is a citizen of California. Complaint ¶ 5.

3 7. Citizenship Of Members Of Proposed Plaintiff Class. Plaintiff
4 alleges that the proposed class consists only of persons formerly employed within
5 the State of California. Complaint ¶ 7. On that basis, Defendants allege that at
6 least two-thirds of the persons who make up the proposed class are citizens of the
7 State of California.

8 8. Defendants' Citizenship. Defendant Sears Holdings
9 Corporation is a citizen of Delaware and Illinois. Defendant Sears, Roebuck and
10 Co. is a citizen of New York and Illinois. A corporation "shall be deemed a citizen
11 of any State by which it has been incorporated and of the State where it has its
12 principal place of business." 28 U.S.C. § 1332(c). Sears Holdings Corporation is
13 incorporated under the laws of the State of Delaware, and has its principal place of
14 business in Hoffman Estates, Illinois, where it is headquartered. Sears, Roebuck
15 and Co. is incorporated under the laws of the State of New York, and has its
16 principal place of business in Hoffman Estates, Illinois, where it is headquartered.

17 9. Doe Defendants' Citizenship. The citizenship of fictitious
18 defendants is disregarded for purposes of establishing removal jurisdiction under
19 28 U.S.C. § 1332. *See* 28 U.S.C. § 1441(a); *see also Bryant v. Ford Motor Co.*,
20 886 F.2d 1526 (9th Cir. 1989), cert. denied, 493 U.S. 1076 (1990).

21 10. Size of Class. The Complaint defines a single class and one
22 subclass. The class includes "[a]ll persons employed by defendant during the Class
23 Period as 'Store Managers' or 'General Managers' and similar positions, at any of
24 Defendants' full line retail stores" Complaint ¶ 19. Defendants assert that there are
25 more than 100 individuals who qualify as potential class members during the four-
26 year period alleged. Defendants presently estimate that the number of current and
27 former Store Managers employed by Sears encompassed by the Complaint during
28

1 the alleged class period is greater than 150. Declaration of Robert G. Springhorn
 2 (“Springhorn Decl.”) ¶ 3.

3 Amount in Controversy

4 11. The alleged amount in controversy in this class action exceeds,
 5 in the aggregate, \$5,000,000, exclusive of interest and costs. Defendants deny
 6 plaintiff’s claims in their entirety and assert that plaintiff’s claims are not amenable
 7 to class treatment, but provide the following analysis of potential damages (without
 8 admitting liability) in order to demonstrate that plaintiff’s Complaint puts a
 9 sufficient amount “in controversy” to warrant removal under 28 U.S.C. § 1332(d).
 10 The Complaint seeks payment of allegedly unpaid regular and overtime wages over
 11 a four-year period, premium pay for missed meal and rest periods, and damages for
 12 allegedly inaccurate wage statements at the amounts set by Labor Code § 226(a),
 13 which sets forth maximum damages of \$4,000 per employee. The Complaint also
 14 seeks payment of waiting time penalties under California Labor Code § 203, which
 15 provides that wages shall continue at their regular rate for a period of up to 30 days
 16 if all concededly due wages are not paid at the time of termination.

17 12. When the amount in controversy is not readily apparent from a
 18 complaint, “the court may consider facts in the removal petition” to determine the
 19 potential damages at issue. *Kroske v. US Bank Corp.*, 432 F.3d 976, 980 (9th Cir.
 20 2005) (quoting *Singerv. State Farm Mut. Ins. Co.*, 116 F.3d 373, 377 (9th Cir.
 21 1997)). Where the complaint is silent, a defendant need only satisfy the amount in
 22 controversy by a preponderance of the evidence. *Singer*, 116 F.3d at 376. Thus,
 23 Defendants in this case are only required to establish that it is more likely than not
 24 that the amount in controversy exceeds \$5,000,000. Statutory penalties may be
 25 considered by the Court when determining the amount in controversy. See
 26 *Chabner v. United of Omaha Life Ins. Co.*, 225 F.3d 1042, 1046 n.3 (9th Cir. 2000).
 27 The Court should also include requests for attorneys’ fees in determining the
 28

1 amount in controversy. *See Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56
2 (9th Cir. 1998).

3 13. The potential damages, penalties and restitution plaintiff seeks
4 in this action easily exceed \$5,000,000, exclusive of interest and costs. Defendants'
5 records show that Defendant Sears, Roebuck and Co. alone employed 161 Store
6 Managers during the proposed class period. Springhorn Decl. ¶ 3. Accounting for
7 a leave of absence, Plaintiff was employed by Defendant Sears, Roebuck and Co.
8 for approximately 143 workweeks, and his average hourly rate of pay was \$35.03.
9 Springhorn Decl. ¶ 4.

10 14. Plaintiff's first cause of action is for failure to pay overtime
11 wages. Complaint at ¶¶ 27-39. Based on the Complaint's allegation that Store
12 Managers were misclassified as exempt employees, it is expected that plaintiff will
13 claim to have worked some (as yet unidentified) number of overtime hours each
14 week for which he should have been paid. Assuming that plaintiff claims he was
15 owed for just one (1) overtime hour each week (a conservative estimate as to the
16 number of hours plaintiff will likely claim), his individual damages for the first
17 cause of action would be \$7,513.93 (1 OT Hour at \$52.54 per hour (1.5 * \$35.03)
18 multiplied by 143 weeks). Assuming (as alleged in the Complaint) that plaintiff's
19 claims are typical of the class and that at least one hour of overtime per week is at
20 issue, the amount in controversy on the first cause of action alone would be
21 **\$1,209,742.73**. If plaintiff claims that he and proposed class members worked 5
22 hours of overtime per week, then the amount in controversy on the first cause of
23 action alone would be **\$6,048,713.65** (5 OT hours at \$52.54 * 143 weeks * 161
24 class members). It is not uncommon for plaintiffs in misclassification cases such as
25 this to assert that members of the proposed class worked 10 or even as many as 20
26 hours of overtime per week.

27 15. Plaintiff's second cause of action for failure to provide meal and
28 rest breaks alleges that plaintiff and members of the proposed class were unlawfully

1 denied meal and rest breaks, and were not paid an hour's wages in lieu thereof.
 2 Assuming Plaintiff contends one non-compliant meal and/or rest period each day
 3 during a five-day workweek, plaintiff's individual potential damages over the 143
 4 workweeks that he was employed would be \$25,046.45 ($5 * \$35.03 * 143$ weeks).
 5 If plaintiff's claim is assumed to be typical of the class, the amount in controversy
 6 for the meal and rest break cause of action would be **\$4,032,478.45**.

7 16. Plaintiff's third cause of action for late payment of final wages
 8 under California Labor Code § 203 alleges that class members who are no longer
 9 employed by the defendants were not paid all wages due upon termination. Labor
 10 Code § 203 provides for 30 days' wages as a penalty for late final payment of owed
 11 wages. Of the 161 Store Managers employed by Sears, Roebuck and Co. in
 12 California during the proposed class period, 72 are no longer employed.
 13 Springhorn Decl. ¶ 3. Thirty days of wages for the plaintiff would be \$8,406.54.
 14 Assuming that plaintiff's Labor Code § 203 penalties are typical of those of the
 15 class, the total amount in controversy on plaintiff's third cause of action would be
 16 **\$605,270.88**.

17 17. Plaintiff's fourth cause of action for failure to issue accurate
 18 itemized wage statements carries a maximum penalty of \$4,000 per employee. If
 19 the 161 Store Managers at Sears, Roebuck and Co. were entitled to the maximum
 20 penalties provided by Labor Code § 226(a), the amount in controversy on this claim
 21 alone would be **\$644,000**.

22 18. As the calculations above demonstrate, there is well over
 23 \$5,000,000 in controversy in this action even using the conservative amounts
 24 discussed above: \$1,209,742.73 (OT wages) + 4,032,478.45 (meal & rest breaks) +
 25 605,270.88 (Labor Code § 203 late payment penalties) + \$644,000 (wage statement
 26 claim) = **\$6,491,492.06**. This amount is satisfied even without addressing the
 27 issue of potential attorneys' fees, which are provided for by statute and in the Ninth
 28

1 Circuit typically are 25% of any judgment in favor of the plaintiff. CAFA's
2 amount-in-controversy requirement is easily satisfied.

3 **No Bases for Rejecting or Declining Jurisdiction Exist**

4 19. There are no bases for this Court to reject or decline jurisdiction
5 as set out in 28 U.S.C. § 1332(d). Further, as set out above, no named defendant is
6 a citizen of California; thus 28 U.S.C. §§ 1332(d)(3) and (4)(A)(i)(I) are
7 inapplicable.

8 **DIVERSITY JURISDICTION UNDER 28 U.S.C. § 1332(a)**

9 20. This Court also has original jurisdiction over this civil action
10 (including Plaintiff Perez's claims on an individual basis) against Defendant
11 pursuant to 28 U.S.C. section 1332 (a). This action may therefore be removed by
12 Defendant pursuant to 28 U.S.C. § 1441. As to Plaintiff Ramon's individual
13 claims, the amount in controversy exceeds the sum or value of \$75,000, exclusive
14 of interest and costs, and the claims are between citizens of different states.

15 21. Diverse Citizenship: As mentioned above, Plaintiff is and was
16 at the time of filing the Complaint, and was at all times intervening a citizen and
17 resident of the State of California. In addition, Defendants Sears Holdings Corp.
18 and Sears, Roebuck and Co. were not citizens of California. Accordingly, Plaintiff
19 is a citizen of a state different than that of Defendants.

20 22. Amount in Controversy: Plaintiff's first cause of action is for
21 unpaid overtime. Assuming that plaintiff claims he was owed for just five (5)
22 overtime hours each week (a conservative estimate of what Plaintiff will likely
23 claim), his individual damages for the first cause of action would be **\$37,566.10** (5
24 OT Hours at plaintiff's overtime rate of \$52.54 per hour [$1.5 * \35.03] multiplied
25 by 143 weeks). Plaintiff's second cause of action is for failure to allow and pay for
26 meal and periods. Assuming one non-compliant meal and/or rest period each day
27 during a five-day workweek, plaintiff's individual potential damages over the 143
28 workweeks that he was employed would be **\$25,046.45** (5 hours * \$35.03 * 143

1 weeks). Plaintiff's third cause of action for late payment of final wages under
2 California Labor Code § 203. Thirty days of wages for the plaintiff would be
3 **\$8,406.54**. Plaintiff's fourth cause of action for failure to issue accurate itemized
4 wage statements carries a maximum penalty of **\$4,000** per employee. Therefore,
5 plaintiff's amount in controversy, under a conservative estimate, is at least
6 **\$75,019.09**, not including any attorney's fees that are properly included when
7 determining the amount in controversy.

8 **VENUE**

9 23. Venue lies in the Central District of California pursuant to 28
10 U.S.C. §§ 1441(a), 1446(a), and 84(c)(2). This action was originally brought in the
11 Superior Court of the State of California, County of Santa Barbara, which is
12 embraced by the Central District of California.

13 **NOTICE OF REMOVAL**

14 24. This Notice of Removal shall be served promptly on the plaintiff
15 Ramon Perez and filed with the Clerk of the Superior Court of the State of
16 California in and for the County of Santa Barbara.

17 25. In compliance with 28 U.S.C. § 1446(a), attached hereto as
18 **Exhibit A** are copies of all state-court papers served herein, including the summons
19 and Complaint.

20 26. WHEREFORE, Defendants prays that this civil action be
21 removed from the Superior Court of the State of California, County of Santa
22 Barbara to the United States District Court of the Central District of California.

23 Dated: April 25, 2011

24 LYNNE C. HERMLE
25 JOSEPH C. LIBURT
26 CHRISTIAN N. BROWN
27 Orrick, Herrington & Sutcliffe LLP

28 By: 
CHRISTIAN N. BROWN
Attorneys for Defendants

EXHIBIT A

CM-010

| | | | |
|--|--|--|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Stanley D. Saltzman, Esq. (SBN 90058) Kiley L. Grombacher, Esq. (SBN 245960) MARLIN & SALTZMAN, LLP 29229 Canwood Street, Suite 208 Agoura Hills, CA 91301 TELEPHONE NO.: (818) 991-8080 FAX NO.: (818) 991-8081 ATTORNEY FOR (Name): Plaintiff | | FOR COURT USE ONLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA BARBARA MAR 14 2011 GARY M. BLAIR, Executive Officer BY <u>Merilee A. Jay</u> Deputy Clerk | |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA BARBARA STREET ADDRESS: 1100 Anacapa Street MAILING ADDRESS: 1100 Anacapa Street CITY AND ZIP CODE: Santa Barbara, CA 93121 BRANCH NAME: ANACAPA BRANCH | | CASE NUMBER: 1379818 JUDGE: DEPT: | |
| CASE NAME: PEREZ v. SEARS | | CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) | |
| Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) | | CASE NUMBER: 1379818 JUDGE: DEPT: | |

Items 1-6 below must be completed (see instructions on page 2).

| | | |
|---|--|--|
| 1. Check one box below for the case type that best describes this case: | | |
| Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15) | Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43) |

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. ☐ Large number of separately represented parties d. ☒ Large number of witnesses
- b. ☒ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☒ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): five (5)
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: March 9, 2011

Kiley L. Grombacher, Esq.
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET**CM-010**

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

| | | |
|---|---|---|
| Auto Tort | Contract | Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403) |
| Auto (22)—Personal Injury/Property Damage/Wrongful Death | Breach of Contract/Warranty (06) | Antitrust/Trade Regulation (03) |
| Uninsured Motorist (46) (<i>if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto</i>) | Breach of Rental/Lease | Construction Defect (10) |
| | Contract (<i>not unlawful detainer or wrongful eviction</i>) | Claims Involving Mass Tort (40) |
| | Contract/Warranty Breach—Seller Plaintiff (<i>not fraud or negligence</i>) | Securities Litigation (28) |
| | Negligent Breach of Contract/Warranty | Environmental/Toxic Tort (30) |
| | Other Breach of Contract/Warranty | Insurance Coverage Claims (<i>arising from provisionally complex case type listed above</i>) (41) |
| Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort | Collections (e.g., money owed, open book accounts) (09) | Enforcement of Judgment |
| Asbestos (04) | Collection Case—Seller Plaintiff | Enforcement of Judgment (20) |
| Asbestos Property Damage | Other Promissory Note/Collections Case | Abstract of Judgment (Out of County) |
| Asbestos Personal Injury/Wrongful Death | Insurance Coverage (<i>not provisionally complex</i>) (18) | Confession of Judgment (<i>non-domestic relations</i>) |
| Product Liability (<i>not asbestos or toxic/environmental</i>) (24) | Auto Subrogation | Sister State Judgment |
| Medical Malpractice (45) | Other Coverage | Administrative Agency Award (<i>not unpaid taxes</i>) |
| Medical Malpractice—Physicians & Surgeons | Other Contract (37) | Petition/Certification of Entry of Judgment on Unpaid Taxes |
| Other Professional Health Care Malpractice | Contractual Fraud | Other Enforcement of Judgment Case |
| Other PI/PD/WD (23) | Other Contract Dispute | Miscellaneous Civil Complaint |
| Premises Liability (e.g., slip and fall) | Real Property | RICO (27) |
| Intentional Bodily Injury/PD/WD (e.g., assault, vandalism) | Eminent Domain/Inverse Condemnation (14) | Other Complaint (<i>not specified above</i>) (42) |
| Intentional Infliction of Emotional Distress | Wrongful Eviction (33) | Declaratory Relief Only |
| Negligent Infliction of Emotional Distress | Other Real Property (e.g., quiet title) (26) | Injunctive Relief Only (<i>non-harassment</i>) |
| Other PI/PD/WD | Writ of Possession of Real Property | Mechanics Lien |
| Non-PI/PD/WD (Other) Tort | Mortgage Foreclosure | Other Commercial Complaint Case (<i>non-tort/non-complex</i>) |
| Business Tort/Unfair Business Practice (07) | Quiet Title | Other Civil Complaint (<i>non-tort/non-complex</i>) |
| Civil Rights (e.g., discrimination, false arrest) (<i>not civil harassment</i>) (08) | Other Real Property (<i>not eminent domain, landlord/tenant, or foreclosure</i>) | Miscellaneous Civil Petition |
| Defamation (e.g., slander, libel) (13) | Unlawful Detainer | Partnership and Corporate Governance (21) |
| Fraud (16) | Commercial (31) | Other Petition (<i>not specified above</i>) (43) |
| Intellectual Property (19) | Residential (32) | Civil Harassment |
| Professional Negligence (25) | Drugs (38) (<i>if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential</i>) | Workplace Violence |
| Legal Malpractice | Judicial Review | Elder/Dependent Adult Abuse |
| Other Professional Malpractice (<i>not medical or legal</i>) | Asset Forfeiture (05) | Election Contest |
| Other Non-PI/PD/WD Tort (35) | Petition Re: Arbitration Award (11) | Petition for Name Change |
| Employment | Writ of Mandate (02) | Petition for Relief from Late Claim |
| Wrongful Termination (36) | Writ—Administrative Mandamus | Other Civil Petition |
| Other Employment (15) | Writ—Mandamus on Limited Court Case Matter | |
| | Writ—Other Limited Court Case Review | |
| | Other Judicial Review (39) | |
| | Review of Health Officer Order | |
| | Notice of Appeal—Labor | |
| | Commissioner Appeals | |

SUMMONS (CITACION JUDICIAL)

SUM-100

NOTICE TO DEFENDANT: SEARS ROEBUCK AND CO., a New York
(**AVISO AL DEMANDADO:**) corporation, SEARS HOLDING CORP.,
a Delaware corporation, and DOES 1 through 100,
inclusive

DB 3/24/11
2:28

YOU ARE BEING SUED BY PLAINTIFF: RAMON PEREZ, as an
(**LO ESTÁ DEMANDANDO EL DEMANDANTE:**) individual and on
behalf of all others similarly situated

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED

SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

MAR 14 2011

GARY M. BLAIR, Executive Officer

BY Merilee A. Jay
Merilee A. Jay, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desecher el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

SANTA BARBARA COUNTY SUPERIOR COURT

1100 Anacapa Street

1100 Anacapa Street

Santa Barbara, CA 93121

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Stanley D. Saltzman, Esq. (SBN 90058)

Kiley L. Grombacher, Esq. (SBN 245960)

MARLIN & SALTZMAN, LLP

29229 Canwood Street, Suite 208, Agoura Hills, CA, 91301

DATE:

(Fecha)

MAR 14 2011

Clerk, by

(Secretario)

MERILEE A. JAY

Deputy

(Adjunto)

CASE NUMBER:
(Número del Caso):

1379818

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

4. ☐ by personal delivery on (date):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

Page 1 of 1

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9 Attorneys for Plaintiff and the Proposed Plaintiff Class

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY OF SANTA BARBARA

MAR 14 2011

GARY M. BLAIR, Executive Officer
BY Merilee A. Jay
Merilee A. Jay, Deputy Clerk

10
11 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SANTA BARBARA**

13 RAMON PEREZ, as an individual and on
behalf of all others similarly situated,

14 Plaintiff,

15 v.

16 SEARS ROEBUCK AND CO., a New
17 York corporation, SEARS HOLDING
CORP., a Delaware corporation, and
18 DOES 1 through 100, inclusive,

19 Defendants.

CASE NO. 1379818

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Overtime Wages (*Lab. Code § 1194*);
2. Failure to Allow and Pay for Meal and Rest Periods (*Lab. Code §§ 200, 226.7, 512*);
3. Failure to Pay Compensation Upon Discharge (*Lab. Code §§ 201-203*);
4. Failure to Provide Proper Wage Statement (*Lab. Code § 226*);
5. Violation of California *Bus. & Prof. Code §§ 17200-17208*);

DEMAND FOR JURY TRIAL

21
22
23 RAMON PEREZ ("Plaintiff"), individually and behalf of all others similarly situated, alleges
24 the following against SEARS ROEBUCK AND CO., SEARS HOLDING CORP., and DOES 1
25 through 100, (hereinafter sometimes collectively referred to as "Defendants"):

INTRODUCTION

26
27 1. This matter is brought as a class action pursuant to California *Code of Civil Procedure*
28 § 382, on behalf of Plaintiff and the Plaintiff Class, which is comprised of all persons who are, or have

1 been employed by defendants as Managers in any of Defendants' full-line California stores during the
2 Class Period, which runs from December 7, 2006, to the date judgment is rendered herein.

3 2. Plaintiff seeks relief on behalf of himself and the Plaintiff Class based on Defendants'
4 (a) failure to pay overtime compensation in violation of *Labor Code* § 1194 and the orders and
5 standards promulgated by the California Division of Labor Standards Enforcement and the California
6 Industrial Commission, (b) failure to allow and pay for meal and rest breaks pursuant to *Labor Code*
7 §§ 220, 226.7 and 512, (c), failure to pay compensation at the time of termination in violation of *Labor*
8 *Code* §§ 201-203, (d) failure to furnish Plaintiff and the Plaintiff Class with accurate itemized
9 statements upon payment of wages as required by *Labor Code* § 226, and (e) violation of California's
10 unfair competition laws (*Business & Professions Code* § 17200).

11 3. Plaintiff's claims are based on the erroneous misclassification of Plaintiff and members
12 of the Plaintiff Class as exempt from California's wage and hour laws which require defendants to pay
13 overtime compensation, and provide its employees proper, statutorily required meal and rest periods.
14 In fact, Plaintiff and members of the Plaintiff Class performed non-exempt job duties, and thus are,
15 and were entitled to, but denied overtime compensation, and proper meal and rest periods.

16 JURISDICTION AND VENUE

17 4. Venue is proper in this court because Defendant maintains offices and transact business
18 within the jurisdiction of this Court, because the conduct alleged herein which gives rise to the claims
19 asserted occurred within the jurisdiction of this Court. Specifically, plaintiff Ramon Perez worked for
20 Defendant within Santa Barbara County, and the wages herein claimed were earned by him in Santa
21 Barbara County.

22 THE PARTIES

23 5. At all times mentioned herein Plaintiff Ramon Perez was, and now is, a resident of the
24 County of Ventura, State of California.

25 6. Plaintiff was employed by Defendants as a Manager of Defendant's Sears store in Santa
26 Barbara, California, from September, 2008, to July, 2010.

27 7. The members of the proposed class are likewise current and former employees of
28 Defendant, employed by defendant within the state of California as Managers.

1 12. Specifically, the primary job duties performed by Plaintiff and members of the Plaintiff
2 Class were, and are maintaining the inventory and sales floor, cleaning the store, working the cash
3 registers, sales, and assisting customers. Plaintiff and the members of the Plaintiff Class spent the
4 majority of their time performing these non-exempt job duties, as opposed to job duties classified as
5 exempt under California law.

6 13. Plaintiff and members of the Plaintiff Class are not involved in managing Defendant's
7 enterprise, and are not subject to any exemptions for executive, administrative or professional
8 employees. Defendant was therefore obligated to pay Plaintiff and members of the Plaintiff Class
9 compensation for overtime, and to provide them the statutorily mandated meal and rest periods, and/or
10 to compensate Plaintiffs therefore. However, Defendant improperly classified Plaintiff and members
11 of the Plaintiff Class as exempt employees, exempt from the wage and hour provisions identified
12 above.

13 14. Plaintiff and each member of the Plaintiff Class routinely worked in excess of the
14 maximum regular rate hours established by the IWC in the above-described Wage Orders, regulations,
15 and statutes, which entitled them to overtime compensation as set by law. Since at least November 15,
16 2006, and continuing to the present, Defendant has had a consistent policy of failing to pay wages
17 and/or overtime to Plaintiff and members of the Plaintiff Class for all work performed and/or work
18 over eight (8) hours per day or forty (40) per week. Relying upon, and consistent with Defendant's
19 standard policy, practice and procedure of classifying Plaintiff and each member of the Plaintiff Class
20 as exempt employees, Defendant failed and refused to compensate Plaintiff and members of the
21 Plaintiff Class for overtime worked by them.

22 15. Plaintiff and each member of the Plaintiff Class were routinely not allowed meal and
23 rest breaks as required by the IWC in the above-described Wage Orders, regulations, and statutes.
24 Since at least December 7, 2006, and continuing to the present, Defendant has had a consistent policy
25 of failing to provide Plaintiff and members of the Plaintiff Class statutorily required meal and rest
26 periods. Relying upon, and consistent with Defendant's standard policy, practice and procedure of
27 classifying Plaintiff and each member of the Plaintiff Class as exempt employees, Defendant failed
28

1 and refused to allow Plaintiff and members of the Plaintiff Class statutorily required meal and rest
2 periods.

3 16. Plaintiff and each member of the Plaintiff Class were routinely provided wage
4 statements which do not truly and accurately reflect the number of hours worked by them, or the wages
5 due to them, specifically including but not limited to, failing to reflect hours worked overtime, and
6 overtime wages due, and compensation due for missed meal and rest breaks. Since at least
7 November 15, 2006, and continuing to the present, Defendant has had a consistent policy of failing to
8 provide Plaintiff and members of the Plaintiff Class true and accurate wage statements upon payment
9 of wages, as required by California *Labor Code* § 226(a).

10 17. Plaintiff and each member of Sub-Class No. 1 (hereinafter sometimes referred to as the
11 "Terminated Sub-Class"), whose employment with Defendant was terminated during the class period,
12 were routinely not paid, upon termination, all wages due to them, in violation of California *Labor*
13 *Code* section 201-203. Specifically, Plaintiff and members of the Terminated Sub-Class were not paid
14 for overtime, nor were they compensated for missed meal and rest breaks. Since at least November 15,
15 2006, and continuing to the present, Defendant has had a consistent policy of failing to provide
16 Plaintiff and members of the Terminated Sub-Class all wages due to them upon termination. Relying
17 upon, and consistent with Defendant's standard policy, practice and procedure of classifying Plaintiff
18 and each member of the Terminated Sub-Class as exempt employees, Defendant failed and refused
19 to compensate Plaintiff and members of the Terminated Sub-Class for overtime, and missed meal and
20 rest breaks at the time their employment was terminated.

21 18. During the Class Period, defendants required Plaintiff and members of the Plaintiff
22 Class to work overtime without lawful compensation, and without proper meal and rest breaks.
23 Defendants, in violation of the above-described Wage Orders and statutes, willfully failed and refused
24 to pay Plaintiff and members of the Plaintiff Class overtime compensation, failed to provide them, or
25 to compensate them for meal and rest periods, failed to pay all wages due upon termination, and failed
26 to provide true and accurate wage statements. Said policies, procedures, and practices are in violation
27 of the California *Labor Code*, including, but not limited to, *Labor Code* §§ 201-203.

28

CLASS ACTION ALLEGATIONS

19. Plaintiff brings this action on behalf of himself and all others similarly situated as a class action, pursuant to California *Code of Civil Procedure* section 382. The class which Plaintiff seeks to represent is composed of, and defined as follows:

Plaintiff Class:

All persons employed by defendant during the Class Period as "Store Managers" or "General Managers" and similar positions, at any of Defendants' full line retail stores:

Sub-Class No. 1:

All members of the Plaintiff Class whose employment ended during the Class Period.

20. The Class period is designated as the period from December 7, 2006, through and including the date judgment is rendered in this matter, and includes anyone employed by Defendants in the State of California during that period meeting the class definition.

21. The Class is so numerous that the individual joinder of all members is impracticable. While the exact number and identification of Class Members are unknown to plaintiff at this time and can only be ascertained through appropriate discovery directed to Defendants, Plaintiff is informed and believes that the Class includes hundreds, and possibly thousands of members.

22. Common questions of law and fact exist as to all members of the Class which predominate over any questions affecting only individual members of the Class. These common legal and factual questions, which do not vary from class member to class member, and which may be determined without reference to the individual circumstances of any class member, include, but are not limited to, the following:

- a. Whether Plaintiff and members of the proposed class are subject to and entitled to the benefits of California Wage and Hour statutes;
- b. Whether Defendants misclassified Plaintiff and members of the Plaintiff Class as exempt employees under California's wage and hour laws;

- 1 c Whether Plaintiff and members of the Plaintiff Class are entitled to overtime
- 2 compensation;
- 3 d. Whether Defendants failed to pay overtime compensation to plaintiff and
- 4 members of the Plaintiff Class;
- 5 e. Whether Defendant's policy and practice of classifying Plaintiff and members
- 6 of the Plaintiff Class as exempt, and failing to provide them overtime
- 7 compensation violated provisions of California's wage and hour laws;
- 8 f. Whether Plaintiff and members of the Plaintiff Class are entitled to meal and
- 9 rest periods;
- 10 g. Whether Defendants failed to provide and/or compensate plaintiff and members
- 11 of the Plaintiff Class for meal and rest periods;
- 12 h. Whether Defendant's policy and practice of not providing Plaintiff and
- 13 members of the Plaintiff Class meal and rest periods violated provisions of
- 14 California's wage and hour laws;
- 15 i. Whether Defendants unlawfully and/or willfully failed to promptly pay
- 16 compensation owing to plaintiff and members of the Terminated Sub-Class
- 17 upon termination of their employment, in violation of *Labor Code* §§ 201-203;
- 18 j. Whether Defendants unlawfully and/or willfully failed to provide Plaintiff and
- 19 members of the Plaintiff Class with true and proper wage statements upon
- 20 payment of wages, in violation of *Labor Code* section 226;
- 21 k. Whether Plaintiff and members of the Plaintiff Class sustained damages, and
- 22 if so, the proper measure of such damages, as well as interest, penalties, costs,
- 23 attorneys' fees, and equitable relief; and
- 24 l. Whether Defendants violated the Unfair Business Practices Act of California,
- 25 *Bus. & Prof. Code* § 17200, *et seq.*, by violating the above cited provisions, and
- 26 treating plaintiff and members of the Plaintiff Class unfairly by failing to pay
- 27 them overtime, failing to provide them meal and rest periods, failing to pay
- 28

1 them wages due upon termination, and failing to provide true and accurate
2 wage statements.

3 23. The claims of the named Plaintiff are typical of the claims of the members of the
4 proposed class. Plaintiff and other class members sustained losses, injuries and damages arising out
5 Defendants' common policies, practices, procedures, protocols, routines, and rules which were applied
6 to other Class Members as well as plaintiff. Plaintiff seeks recovery for the same type of losses,
7 injuries, and damages as were suffered by other members of the proposed class.

8 24. Plaintiff is an adequate representative of the Class because he is a member of the Class
9 and his interests do not conflict with the interest of the members he seeks to represent. Plaintiff has
10 retained counsel competent experienced in prosecution of complex class actions, and together Plaintiff
11 and his counsel intend to prosecute this action vigorously for the benefit of the Class. The interests
12 of the Class members will fairly and adequately be protected by plaintiff and his attorneys.

13 25. A class action is superior to other available methods for the fair and efficient
14 adjudication of this litigation since individual litigation of the claims of all Class members is
15 impracticable. It would be unduly burdensome to the courts if these matters were to proceed on an
16 individual basis, because this would result in hundreds, and potentially thousands of individual,
17 repetitive lawsuits. Individual litigation presents the potential for inconsistent or contradictory
18 judgments, and the prospect of a "race to the courthouse," and an inequitable allocation of recovery
19 among those with equally meritorious claims. By contrast, the class action device presents far fewer
20 management difficulties and provides the benefit of a single adjudication, economics of scale, and
21 comprehensive supervision by a single court.

22 26. The various claims asserted in this action are additionally or alternatively certifiable
23 under the provisions of the California *Code of Civil Procedure* section 382 because:

- 24 a. The prosecution of separate actions by hundreds or thousands of individual
25 class members would create a risk of varying adjudications with respect to
26 individual class members, thus establishing incompatible standards of conduct
27 for Defendants.
28

b. The prosecution of separate actions by individual class members would also create the risk of adjudications with respect to them that, as a practical matter, would be dispositive of the interest of the other class members who are not a party to such adjudications and would substantially impair or impede the ability of such non-party class members to protect their interests.

c. Defendants have acted or refused to act on grounds applicable to the entire Class, thereby making appropriate final declaratory and injunctive relief with respect to the Class as a whole.

FIRST CAUSE OF ACTION

(Failure to Pay Overtime Compensation)

(By All Plaintiffs Against All Defendants)

27. Plaintiff incorporates herein by reference the allegations set forth above in paragraphs 1 through 26.

28. Pursuant to California *Labor Code* § 1194 and the applicable Industrial Welfare Commission ("IWC") Wage Order, it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

29. Pursuant to California *Labor Code* § 1198, the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

30. Pursuant to the applicable IWC Wage Order, Defendants are and were required to pay Plaintiff and the other class members at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

31. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and the other class members overtime compensation at a rate of two times her regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

1 32. Pursuant to California *Labor Code* § 510, any work in excess of eight hours in one
2 workday and any work in excess of 40 hours in any one workweek and the first eight hours worked
3 on the seventh day of work in any one workweek shall be compensated at the rate of no less than one
4 and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day
5 shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In
6 addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated
7 at the rate of no less than twice the regular rate of pay of an employee.

8 33. Pursuant to California *Labor Code* § 510, Plaintiff and the other class members are
9 entitled to overtime compensation at one-and-one-half times the regular hourly rate for hours worked
10 in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked
11 on the seventh day of work, and to overtime compensation at twice the regular hourly rate for hours
12 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh
13 day of work.

14 34. During the relevant time period, Plaintiff and the other class members regularly and/or
15 consistently worked in excess of eight (8) hours in a day.

16 35. During the relevant time period, Plaintiff and the other class members regularly and/or
17 consistently worked in excess of twelve (12) hours in a day.

18 36. During the relevant time period, Plaintiff and the other class members regularly and/or
19 consistently worked in excess of forty (40) hours in a week.

20 37. Plaintiff and each member of the Plaintiff Class are entitled to overtime compensation
21 for all hours worked in excess of the hours and time specified in the Wage Orders, statutes and
22 regulations identified above.

23 38. Defendants committed the acts alleged herein knowingly and willfully, with the
24 wrongful and deliberate intention of injuring plaintiff and the Plaintiff Class, with improper motives
25 amounting to malice, and in conscious disregard of the rights of plaintiff and the Plaintiff Class.
26 Plaintiff and the Plaintiff Class are thus entitled to recover nominal, actual, compensatory, punitive,
27 and exemplary damages in amounts according to proof at the time of trial, but in excess of the
28 minimum jurisdiction of this Court.

39. Defendants' conduct described herein violates the California *Code of Regulations*, Title 8, § 11070, and *Labor Code* §§ 200, 203, 226, 226.7, 512, and 1194. Plaintiff and members of the Plaintiff Class are thus entitled to recover, in addition to the unpaid balance of overtime compensation defendants owe them, interest, penalties, attorneys' fees, expenses and costs of suit. Plaintiff and members of the Plaintiff Class assert a claim for penalties pursuant to *Labor Code* §§ 201, 202, 203, 204, 210, 225.5, 223, 226, 226.3, 226, 226.3, 226.7, 227.3, 510, 512, 1194, and 1194.2.

SECOND CAUSE OF ACTION

(Failure to Allow and Pay for Meal and Rest Breaks)

(By All Plaintiffs Against All Defendants)

40. Plaintiff incorporates herein by reference the allegations set forth above in paragraphs 1 through 39.

41. At all times herein mentioned, the Industrial Welfare Commission Order and California *Labor Code* §§ 226.7 and 512(a) were applicable to Plaintiffs and the other class members' employment by Defendants.

42. Pursuant to California *Labor Code* § 512(a), an employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

43. *Labor Code* § 226.7(a) provides, "no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

44. As alleged herein, Defendants routinely interrupted and/or failed to permit, authorize and/or provide Plaintiffs and Class members' meal breaks. By these actions, Defendants violated California *Labor Code* § 226.7(a) and § 512(a), in the number, length and manner of the breaks mandated by statute and regulation. At no time did plaintiff or members of the Plaintiff Class expressly or impliedly waive their right to meal and rest breaks.

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FOURTH CAUSE OF ACTION

(Failure to Provide Accurate Wage Statements)

(By All Plaintiffs Against All Defendants)

49. Plaintiff incorporates herein by reference the allegations set forth above in paragraphs 1 through 48.

50. *Labor Code* §226(a) sets forth reporting requirements for employers when they pay wages, as follows: "Every employer shall . . . at the time of each payment of wages, furnish his or her employees . . . an itemized statement in writing showing (1) gross wages earned; (2) total hours worked by the employee . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis. . . ." Section (e) provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4000), and shall be entitled to an award of costs and reasonable attorney's fees."

51. Defendants failed to accurately record the overtime hours worked by plaintiff and members of the Plaintiff Class.

52. Plaintiff and members of the Plaintiff Class request recovery of *Labor Code* § 226(e) penalties according to proof, as well as interest, attorney's fees and costs pursuant to *Labor Code* §226(e), in a sum as provided by the *Labor Code* and/or other statutes.

FIFTH CAUSE OF ACTION

(Unfair Competition: California Business and Professions Code § 17200 etc.)

**(By All Plaintiff, on Behalf of Herself, the Plaintiff Class, and the
General Public, Against All Defendants)**

53. Plaintiff incorporates herein by reference the allegations set forth above in paragraphs 1 through 52.

54. Section 17200 of the California *Business and Professions Code* prohibits any unlawful, unfair or fraudulent business act or practice. A violation of *California Business & Professions Code*

1 §§ 17200 *et seq.* may be predicated on the violation of any state or federal law. As described herein,
2 Defendants violated *California Labor Code* §§ 201, 204, 212, 213, 226(a), 226.7, 510, 1174(d), 1198,
3 2800, and 2802.

4 55. Plaintiff brings this cause of action in a representative capacity on behalf of the general
5 public and the persons affected by the unlawful and unfair conduct described hereafter. Plaintiff and
6 members of the proposed class have suffered and continue to suffer injury in fact and monetary
7 damages as a result of defendants' actions.

8 56. The actions by defendants, including, but not limited to, the continuing failure to pay
9 overtime, failure to provide meal and rest periods, failure to provide itemized wage statements, and
10 failure to pay wages due upon termination, amount to conduct which is unlawful and a violation of law
11 as alleged herein. As such, said conduct amounts to unfair business practices in violation of *Business*
12 *and Professions Code* § 17200 *et. seq.*

13 57. Defendants' conduct as herein alleged has damaged plaintiffs and the members of the
14 Plaintiff Class by denying them wages due and payable, and failing to provide proper wage statements.
15 Defendants' actions are thus substantially injurious to Plaintiff and the members of the Plaintiff Class,
16 causing them injury in fact and loss of money.

17 58. As a result of such conduct, defendants have unlawfully and unfairly obtained monies
18 due to the plaintiff and the members of the Plaintiff Class.

19 59. All members of the Plaintiff Class can be identified by reference to payroll and related
20 records in the possession of the defendants. The amount of wages due plaintiff and members of the
21 Plaintiff Class can be readily determined from defendants' records. The members of the proposed
22 class are entitled to restitution of monies due and obtained by defendants during the Class Period as
23 a result of defendants' unlawful and unfair conduct.


24 60. Beginning at a date unknown to Plaintiff, but at least as early as December 7, 2006,
25 defendants committed, and continue to commit acts of unfair competition as defined by § 17200 *et.*
26 *seq.* of the *Business and Professions Code*, by and among other things, engaging in the acts and
27 practices described above.

28

7. For reasonable attorney's fees pursuant to *Labor Code* §§ 226 and 1194; and
8. For all such other and further relief that the Court may deem just and proper.

DATED: March 9, 2011

MARLIN & SALTZMAN, LLP
UNITED EMPLOYEES LAW GROUP, PC

By: 
Kiley L. Grombacher, Esq. of Marlin & Saltzman
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff requests a trial by jury on all applicable claims.

DATED: March 9, 2011

MARLIN & SALTZMAN, LLP
UNITED EMPLOYEES LAW GROUP, PC

By: 
Kiley L. Grombacher, Esq. of Marlin & Saltzman
Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA
Gary M. Blair, Executive officer

Number: 411071 03-14-11 3:03 pm
Marlin & Saltzman
Anacapa Check
10904

G 1379818
Ramon Perez
VS.
Sears Roebuck and Co et cl

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|-------------------|--------------------|
| CV-Complaint 25K+ | 395.00 |
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| File Total: | 395.00 |
| MJAY | Total Paid: 395.00 |

3/31/11 1-48

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|--|---|---------------------------------|
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA BARBARA STREET ADDRESS: 1100 Anacapa Street MAILING ADDRESS: CITY AND ZIP CODE: Santa Barbara, California 93101 BRANCH NAME: Santa Barbara-Anacapa Division | FOR COURT USE ONLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA BARBARA MAR 28 2011 GARY M. BLAIR, Executive Officer BY <u>April Garcia</u> APRIL GARCIA, Deputy Clerk | F _____ DE _____ CA _____ |
| Caption: Ramon Perez vs Sears Roebuck and Co, et al <u>DB</u> | | |
| ORDER & NOTICE OF CASE ASSIGNMENT NOTICE OF CASE MANAGEMENT CONFERENCE | CASE NUMBER: 1379818 | |

The above case is hereby assigned to Judge Denise de Bellefeuille for ALL purposes, including trial. All future matters, including ex-parte matters, are to be scheduled with the assigned judge. Counsel shall include the name of the assigned judge in the caption of every document filed with the court. The above-entitled case is hereby ordered set for:

CASE MANAGEMENT CONFERENCE on 7/14/11
 at 8:30 am in Dept. SB6 at the court address above.

PLAINTIFF SHALL GIVE NOTICE of this assignment to ALL parties brought into the case, including but not limited to defendants, cross-defendants and intervenors. A Proof of Service of this ORDER & NOTICE OF CASE ASSIGNMENT is to be filed with the Court within five (5) working days after service. Failure to give notice and file proof thereof or failure to appear may result in the imposition of sanctions. Pursuant to California Rule of Court 3.725, no later than fifteen (15) calendar days before the date set for the Case Management Conference, each party must file a Case Management Statement (Judicial Council form GM110). In lieu of each party filing a separate Case Management Statement, any two or more parties may file a joint statement.

At the Court's discretion counsel, parties and insurance representatives (if any) with full settlement authority may be required to attend a CADRe Information Meeting within ten (10) days of the Conference date.

Dated: 03/28/11

B. E. Hill
 JUDGE OF THE SUPERIOR COURT
 BRIAN E. HILL

CLERK'S CERTIFICATE OF MAILING

I certify that I am not a party of this action and that a true copy of the foregoing was mailed first class, postage prepaid in a sealed envelope addressed as shown, and that the mailing of the foregoing and execution of this certificate occurred at Santa Barbara, California, on 03/28/11

Stanley D Bradley
 Marlin & Saltzman
 29229 Canwood St Ste 208
 Agoura Hills, CA 91301

Gary M. Blair, Executive Officer

By April Garcia, Deputy